

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

IN RE: PET FOOD PRODUCTS  
LIABILITY LITIGATION

Civil Action No. 07-2867 (NLH)

MDL DOCKET NO. 1850

THIS DOCUMENT RELATES TO:

ALL CASES

**DECLARATION OF STEVE W.  
BERMAN IN SUPPORT OF  
MAJORITY PLAINTIFFS' MOTION  
FOR APPOINTMENT OF INTERIM  
CO-LEAD AND LIAISON COUNSEL  
PURSUANT TO FED. R. CIV. P. 23(G)**

Date: September 26, 2007

Time: 11:00 a.m.

Courtroom: 3A

The Honorable Noel L. Hillman

Pursuant to 28 U.S.C. § 1746, I, Steve W. Berman, declare as follows:

1. I am the managing partner of the law firm of Hagens Berman Sobol Shapiro LLP (“Hagens Berman”). The matters set forth herein are within my personal knowledge and, if called and sworn as a witness, I could competently testify regarding them.
2. Hagens Berman filed a class action lawsuit on behalf of Stacey Heller, Toinette Robinson, David Rapp and Cecily and Terrence Mitchell within weeks of the first Menu Foods recall, on March 27, 2007, in the United States District Court, Western District of Washington (CV 07-0453).
3. Hagens Berman subsequently filed other class action lawsuits in the United States

District Court, Western District of Washington. Hagens Berman is counsel for the named plaintiffs in the following actions now pending before this Court and consolidated into the above-captioned action:

- a. *Stacy Heller, Toinette Robinson, David Rapp and Cecily and Terrence Mitchell v. Menu Foods*, CV-07-3252-NLH-AMD
- b. *Audrey Kornelius and Barbara Smith v. Menu Foods*, CV-07-3253-NLH-AMD
- c. *Suzanne E. Johnson and Craig R. Kleeman v. Menu Foods*, CV-07-3254-NLH-AMD
- d. *Laura Migliore v. Menu Foods*, CV 07-0575-RSL
- e. *Gail Moran v. Menu Foods*, CV 07-0576-JCC
- f. *Sheryl Puett v. Menu Foods*, CV 07-0577-RSL
- g. *Daniel Ray Reeves v. Menu Foods*, CV 07-0634-JCC
- h. *Jeff Rusiecki v. Menu Food*, CV 07-5204-RJB
- i. *Nancy Guthrie v. Menu Foods*, CV 07-5205 RJB
- j. *Sheree A. Robinson v. Menu Foods*, CV 07-0666 RSL
- k. *Phyllis A. Ullman v. Menu Foods*, CV 07-0667 MJP
- l. *Elizabeth Palmer v. Menu Foods*, CV 07-0668 JLR
- m. *Jason Labbate v. Menu Foods*, CV 07-0669 MJB
- n. *Megan Whitt v. Menu Foods*, CV 07-0670 RSM
- o. *Linda Weitz v. Menu Foods*, CV 07-0684 RSM
- p. *Michelle Adams v. Menu Foods*, CV 07-0685 JPD
- q. *Larae Dineen v. Menu Foods*, CV 07-0686 RSM
- r. *Sandra Shingle v. Menu Foods*, CV 07-0687 MJP
- s. *Gary Thomas v. Menu Foods*, CV 07-0688 TSZ
- t. *Deborah Mullen v. Menu Foods*, CV 07-0689 JLR
- u. *Helen Percy v. Menu Foods*, CV 07-0690 RSL
- v. *Paula Monk v. Menu Foods*, CV 07-0745 JCC
- w. *Tony Boyer v. Menu Foods*, CV 07-0746 RSL
- x. *Norma Brenton v. Menu Foods*, CV 07-0747 JCC
- y. *Lynda Nagel v. Menu Foods*, CV 07-0748 JLR
- z. *Teresa Eilers v. Menu Foods*, CV 07-0749 TSZ

4. Hagens Berman seeks to be appointed Interim Co-Lead Counsel for the putative class in this action pursuant to Rule 23(g) of the Federal Rules of Civil Procedure, along with the law firms of Wexler Toriseva Wallace LLP, Berger & Montague, P.C., and Coughlin Stoia Geller Rudman & Robbins LLP (collectively “Proposed Co-Lead Counsel”). I submit this

declaration in support of Majority Plaintiffs' Motion for Appointment of Interim Lead Co-Lead Counsel and Liaison Counsel Pursuant to Fed. R. Civ. P. 23(g).

5. Attached to this declaration as Exhibit A is a true and correct copy of the Hagens Berman's firm resume.

6. As part of our commitment to investigating and prosecuting the claims of the class, Hagens Berman has associated with Adam P. Karp and the Animal Law Offices of Adam P. Karp. Mr. Karp filed one of the first class action cases against Menu Foods arising out of the contaminated pet food, *Michele Suggett and Don James v. Menu Foods, Iams and Eukanuba*, CV 07-0411 RSM (W.D. Wash.). Mr. Karp has extensive experience in the area of animal rights, including animal injury, death, custody, and cruelty. He is a frequent speaker and author on these topics throughout the United States. A true and accurate copy of the firm resume of the Animal Law Offices of Adam P. Karp is attached as Exhibit B. Mr. Karp's exceptional and extensive qualifications are outlined more fully therein.

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

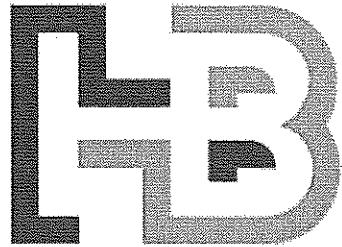
**FURTHER DECLARANT SAYETH NAUGHT**

Dated: September 5, 2007



Steve W. Berman

## **EXHIBIT A**



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## The Firm

Based in Seattle, Washington, **Hagens Berman Sobol Shapiro LLP** (HBSS) was founded in 1993 with one purpose - to pursue the type of law that most interested the founders. This involved representing plaintiffs in class actions and multi-party, large-scale complex litigation and becoming engaged in cases that had the potential for having a positive impact on protecting the rights of investors, consumers, workers, and the environment.

Since then, the firm has stayed true to that purpose and become one of the nation's leading firms in these fields, earning an international reputation for excellence and innovation.

### **Our Focus**

Our main focus is to represent plaintiffs in securities, investment fraud, product liability, tort, antitrust, consumer fraud, employment, environmental, and ERISA cases. In doing so, our firm has become particularly skilled at managing multi-state and nationwide class actions through an organized, coordinated approach that implements an efficient and aggressive prosecutorial strategy in order to place maximum pressure on the defendant.

### **WE Win**

Lawyers in the field of mass tort and class action litigation are often accused of acting in their own interests or settling cheaply. HBSS believes that our excellence stems from a commitment to try each case and obtain maximum recovery for our clients. Our opponents know this and often seek to thwart HBSS' appointment as a lead counsel.

Winning is especially important to HBSS because our compensation depends so much on our performance. We devote approximately 95 percent of our time to litigation under fee agreements that tie our pay to the results we achieve, not to the hours we bill. We have developed innovative contingent and flat fee arrangements with many clients, including partial contingent fees that reduce our hourly rates for a stake in the outcome. We have even used reverse contingent fee arrangements for defending cases where the amount we saved our clients determined our compensation.

Working at our own risk and expense encourages efficient work habits. That efficient approach carries over to our hourly business. The quality of our service, the lack of duplication of effort, access to your lawyers, and our ability to gear up quickly to handle your case all make selecting HBSS a cost-effective decision.

### **Our Offices**

As we have flourished over the years, we have increased our national presence through a network of branch offices in Phoenix, Los Angeles, Cambridge, Chicago and San Francisco.

Founded in 1995, our Phoenix office has driven important litigation and has a strong legal presence in Arizona and the southwest. Shortly thereafter in 1996, we founded the Los Angeles office, which manages our significant case load in California.

In June 2002, our firm opened an office in the Boston area. Now referred to as the Cambridge office, this office leads our drug litigation efforts, challenging the prices of dozens of prescription drugs, and claiming that manufacturers artificially drove up drug prices through numerous anti-competitive practices.

In 2004, in another step to become the nation's premier law firm in class-action and large-scale litigation, we opened a Chicago branch. The firm first created a presence among Illinois' legal and political scene with the landmark litigation against the tobacco industry, in which Steve Berman served as special assistant attorney general for the state.

In another large step towards the firm's continued growth and strong national presence, a San Francisco branch was opened in 2007. San Francisco is a hub of activity and a growing area in the legal landscape. The new office allows the firm to work more effectively with clients and helps position them as a leader in class-action and litigation cases.

#### **Expanding our Reach**

In recent years, our firm has expanded its practice to include representing governmental entities, including actions against the tobacco industry and the pharmaceutical industry. In the groundbreaking state tobacco litigation, the firm represented the states of Alaska, Arizona, Idaho, Illinois, Indiana, Montana, Nevada, New York, Ohio, Oregon, Rhode Island, Vermont, and Washington as special assistant attorneys general in their law enforcement actions against the tobacco industry. Our firm has also served as court-appointed lead class counsel in state and federal litigation in states throughout the country, with heavy caseloads in Arizona, California, Idaho, Illinois, New York, Oregon, and Washington. Hagens Berman Sobol Shapiro's lawyers have played leading and major roles in cases that have resulted in total recoveries of more than \$260 billion.

# Our Success

## **STATE OF WASHINGTON, ET AL. V. PHILIP MORRIS, ET AL.**

HBSS represented 13 states in the largest recovery in litigation history (\$20 billion recovery).

## **IN RE VISA-MASTERCARD ANTITRUST LITIGATION**

HBSS served as co-lead counsel in the largest antitrust settlement in history – valued at \$27 billion.

## **ENRON ERISA LITIGATION**

HBSS is co-lead counsel in the ERISA litigation that has recovered in excess of \$100 million to date.

## **TENET HEALTHCARE LITIGATION**

The firm obtained a settlement – the first of its kind – on behalf of a class of 2 million uninsured patients in 19 different states. Based on novel theories upheld by the court, HBSS helped create a first of its kind settlement recently featured in the National Law Journal.

## **LUPRON SETTLEMENT**

A \$150 million settlement on behalf of patients using Lupron for prostate cancer.

## **RELAFEN SETTLEMENT**

A \$75 million settlement in favor of plaintiffs who purchased Relafen.

## **HUNGARIAN GOLD TRAIN SETTLEMENT**

In 2001 HBSS filed a class-action suit against the United States on behalf of Hungarian Holocaust survivors. The suit claimed the plaintiffs' valuable personal property was loaded on a train by the Hungarian Nazi government during the waning days of WWII. The United States Army later seized the train and its contents. The suit contends that the property was never returned to its owners or heirs, and was instead unlawfully appropriated by the U.S.

The proposed settlement in the case of *Rosner, et al. v. United States* creates a \$25.5 million settlement fund, and provides for a statement by the United States government acknowledging the events surrounding the Gold Train property. Because of the passage of time, lost documentation, and lack of an inventory, there is limited information about the specific items that were on the Gold Train and taken into U.S. custody in 1945. Thus it is very hard to fairly assess and compensate individual class members based on their personal losses. Therefore, the U.S. government and representatives for the class have agreed that a minimum of \$21 million in the settlement fund be used to augment existing social welfare programs for Hungarian victims of Nazi persecution. The settlement agreement also allocates \$500,000 to fund and create an archival collection of information and artifacts for the benefit of the class and other educational purposes.

## Leading Edge Cases

**CB RICHARD ELLIS SEXUAL HARASSMENT LITIGATION.** Hagens Berman Sobol Shapiro has filed a class-action lawsuit against CB Richard Ellis, Inc. on behalf of a group of female employees. Filed in U.S. District Court in Illinois, the suit claims that the company has perpetuated a climate of severe sexual harassment against its female employees. According to the complaint, CB Richard Ellis discriminates against female employees by subjecting them to a hostile, intimidating and offensive work environment, which has resulted in emotional distress and other physical and economic injuries to the class.

The complaint details specific statements and actions directed at the suit's five named plaintiffs and other female employees at CB Richard Ellis. A sampling of such actions include unwanted touching, staring, sexist insults, and everyday occurrences of lewd and sexually charged remarks made by male employees and members of management, the suit states.

**DRAM MANUFACTURERS LITIGATION.** Hagens Berman Sobol Shapiro has filed a suit on behalf of purchasers of DRAM (Dynamic Random Access Memory) from Micron Technology, Crucial Technologies, Infineon Technologies, Hynix Semiconductor Inc. and Samsung Electronics, claiming the companies secretly agreed to reduce supply of DRAM in order to artificially raise prices.

According to the suit, the companies conduct caused Michael Dell, founder and CEO of Dell Computers, to state during a news conference, "I think we saw cartel-like behavior by a couple of DRAM suppliers."

The proposed class action seeks to represent all persons who purchased DRAM from the defendant companies from December 1, 2001 through June 18, 2002.

HBSS won an appointment as co-lead counsel in a contested hearing.

**PFIZER LITIGATION (LIPITOR).** The lawsuit alleges that Pfizer engaged in a massive campaign to convince both doctors and patients that Lipitor is a beneficial treatment for nearly everyone with elevated cholesterol, even though no studies have shown it to be effective for women and those over 65 years of age who do not already have heart disease or diabetes.

Normally, drugs become widely used as treatments for patients only when a well-designed clinical trial finds that the drug is safe and effective for patients of the same type and age. No such trial has shown that Lipitor helps the elderly or females without prior heart disease. In launching the suit, Steve Berman noted that "we believe Pfizer intentionally ignored the scientific evidence – and lack thereof – and launched a multi-million dollar ad campaign designed to push the drug to anyone they could convince to buy it." "We intend to prove that Pfizer pocketed billions in sales to those who do not benefit from Lipitor."

Lipitor is in the class of cholesterol-lowering drugs called statins and it is the best-selling drug in the world, with sales in 2004 of more than \$10 billion.

**PFIZER LITIGATION (CELEBREX).** Hagens Berman Sobol Shapiro has filed a lawsuit on behalf of consumers who purchased the drug Celebrex®. The suit claims that the drug's distributor, Pfizer, Inc., launched an aggressive and misleading marketing campaign to promote Celebrex, while failing to warn consumers that the drug poses risks of blood clots, heart attack, stroke, and other cardiovascular problems.

According to the complaint, Celebrex ads overstate its safety by saying that it provides effective pain relief without the side effects inherent to similar drugs. The misleading ads drove the demand and price of Celebrex beyond what it would have been, had Pfizer truthfully disclosed the drug's risks, the suit states.

Pfizer's misrepresentation of Celebrex is apparent in the process it used to gain approval by the FDA, the complaint alleges. The suit claims that despite Pfizer's prior knowledge that Celebrex posed serious heart risks, it chose to downplay these risks and push the drug on claims that it improves gastrointestinal safety. To support these claims, in 1998 Pfizer funded a clinical CLASS trial to show that Celebrex has greater gastrointestinal safety than traditional pain relievers such as aspirin and ibuprofen. The suit also contends that in Pfizer's plan to gain swift FDA approval, it did not conduct any significant tests on cardiovascular safety, or publish any data on cardiovascular events from the CLASS trial. Therefore, having only reviewed the results of the gastrointestinal safety tests, the FDA approved Celebrex for the relief of osteoarthritis in December 1998, the suit states.

Once it gained approval, Pfizer's advertising campaign proved very profitable, the suit claims. Though the company spent more than \$400 million on direct-to-consumer advertising for Celebrex, sales have yielded billions of dollars, including \$2.3 billion for the first three quarters of 2004, the lawsuit states.

**340B LITIGATION.** A class-action complaint against AstraZeneca, Pfizer, Bristol-Myers Squibb, and several other drug companies has been filed on behalf of California cities and counties that fund participants in the 340B Drug Discount Program.

The proposed suit alleges that the pharmaceutical companies in question wrongfully inflated the price of drugs purchased as a part of the 340B program. The complaint claims that the defendants' actions are a violation of California's Business and Professional Code and the False Claims Act, and that the defendants benefited from Unjust Enrichment.

**CHAMPION MOBILE HOME LITIGATION.** HBSS has filed a class-action complaint against Champion Enterprises, a Michigan-based manufacturer and retailer of modular homes. The proposed suit claims that mobile homes manufactured by Champion and its subsidiaries are improperly designed and constructed, and contain an inadequate vapor barrier on the "living side" of the mobile home walls. According to the complaint, the improper application of the vapor barrier has caused excessive vapor condensation on the exterior walls of homes in the Gulf Coast region, leading to premature deterioration of the wall materials and fungal growth.

The proposed suit represents all persons in Louisiana who purchased mobile homes manufactured by Champion and its subsidiaries between May 15, 1995 and the present.

**TENET HEALTHCARE.** HBSS pioneered this suit with claims against Tenet Healthcare Corporation. Originally filed in December 2002, the lawsuit claimed that patients not covered by insurance plans were charged excessive prices at 114 hospitals owned and operated by Tenet subsidiaries in 16 different states.

The settlement class includes any uninsured patient who received medically necessary services at any of its hospitals between June 15, 1999 and December 31, 2004, and paid for services based on the hospital's gross charges. Under the terms of the proposed settlement, Tenet has agreed to refund amounts paid in excess of certain thresholds.

**HOSPITAL CORPORATION OF AMERICA (HCA).** HBSS has filed a nationwide class-action lawsuit on behalf of individual patients against Hospital Corporation of America (HCA).

The suit alleges that since October of 2000 HCA has artificially inflated their gross charges resulting in significantly higher rates than the national average. According to the complaint, the aggressive pricing strategy was an effort to increase revenues and profits at the expense of the Medicare program and those without the bargaining power of an insurance company. On average, those with insurance pay 40 to 80 percent less than those without insurance.

The suit seeks to represent individuals who received medical care and/or purchased products from any HCA facility and are uninsured, or those whose insurance does not cover full charges, or those who are

self-insured, or those individuals with Medicare and/or Medicaid who made co-payments based on a percentage of the gross rate.

HCA owns or operates approximately 190 general acute care hospitals, plus additional related health care facilities in 23 states.

**INTEL ANTITRUST LITIGATION.** HBSS has filed the nation's first proposed class-action lawsuit against Intel on behalf of consumers, claiming the microprocessor giant has unlawfully maintained a monopoly by engaging in a relentless, worldwide campaign to coerce customers to refrain from dealing with AMD, another microprocessor manufacturer.

According to the suit, consumers ultimately foot this bill, in the form of inflated PC prices and the loss of freedom to purchase computer products that best fit their needs.

The proposed class action includes all United States residents who purchased a microprocessor in the United States indirectly from Intel from June 29, 2001 through the present.

# The Practice

## AN OVERVIEW OF CURRENT LITIGATION\*

**ANTITRUST LITIGATION.** **Hagens Berman Sobol Shapiro** works to keep marketplaces free of price fixing and collusion, protecting the availability of high quality, low priced goods. The firm's antitrust practice includes nationally certified class actions against manufacturers of disposable contact lenses and a high-profile case in which the Justice Department has commenced parallel proceedings challenging the charges imposed by **Visa** and **MasterCard** in connection with use of the debit card.

**Microsoft** recently honored the firm by selecting **Hagens Berman** to represent the company in antitrust litigation. The firm currently assists as national counsel in more than 100 class actions currently faced by the company.

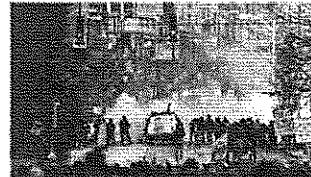
In another major antitrust action the firm has been named lead trial counsel in the case of **Information Resources, Inc. v. A.C. Nielsen** where the damages when trebled exceed \$1 billion.

**CIVIL RIGHTS.** **Hagens Berman Sobol Shapiro** actively seeks out complex civil rights cases, taking on the role of advocate for a variety of individuals and organizations. The firm vigilantly keeps abreast of new state and national legislation that allows it to better represent its clients, including diverse communities such as World War II prisoners of war and conscripted civilians.

Currently, **Hagens Berman Sobol Shapiro** leads a team of lawyers in the **Hungarian Gold Train** case. The firm's involvement follows from its representation of former forced and enslaved laborers for German companies in the Nazi Slave Labor Litigation.

In conjunction with the Trial Lawyers for Public Justice, the firm recently won a settlement from city officials after filing a class action claiming violation of the First and Fourth Amendments. Tens of thousands of Seattle citizens became targets during their peaceful protest of the WTO convention on December 1, 1999. After Seattle officials banned any form of peaceful protest, Seattle police attacked anyone found in the designated "no protest" zones with rubber bullets and tear gas, arresting and incarcerating city residents for three to four days.

Riot Police Douse Peaceful Protesters with Pepper Spray



Riot Police Confront Protestors on Downtown Seattle Streets

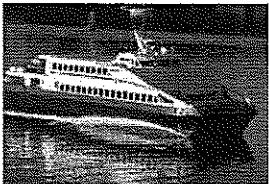
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\*In alphabetical order.

**CONSUMER LITIGATION.** Using large-scale litigation to pressure defendants who defraud or take advantage of customers, **Hagens Berman Sobol Shapiro** pursues opportunities to confront deceptive advertising practices, financing and insurance scams, and redlining practices, among other consumer fraud techniques. Consumer litigation remains one of the firm's largest practice areas, with attorneys representing millions of consumers in numerous actions.

**DRUG LITIGATION.** The firm actively engages in litigation that improves the quality of health products and medical systems, and confronts unscrupulous medical distributors and producers of products such as pharmaceutical drugs, herbal supplements and beauty products. **Hagens Berman Sobol Shapiro** frequently partners with consumer interest and senior organizations to challenge false advertising, pricing schemes, and other drug fraud activities.

Recent successes include reaching a settlement on behalf of all diet drug users in Montana and exerting landmark pressure on **Abbott Laboratories** causing them to send a letter warning laboratories about the risks of false positives in their tests for hCG. **Hagens Berman Sobol Shapiro** represents several plaintiffs in important litigation against **Abbott** after false positives erroneously diagnosed plaintiffs with cancer leading to unnecessary treatment including, in some cases, hysterectomies. In 2003, the firm settled a case against **Rexall** representing thousands of women who purchased their cellulite-fighting product "Cellasene." The plaintiffs alleged that the product didn't work, and **Hagens Berman Sobol Shapiro** filed the first case in the nation challenging Cellasene marketing. The FTC recently filed a similar action against Rexall.



Washington State Ferry  
Chinook

**ENVIRONMENTAL LITIGATION.** Believing that protecting and repairing our ecosystem from irresponsible use is some of the most rewarding work a law firm can do, the firm frequently represents homeowners and landowners injured by environmental abuses. The firm has handled a variety of landmark environmental litigation cases in the Northwest and internationally, using relationships with top-notch environmental experts to develop compelling arguments.

In a recent high-profile case, the firm successfully pursued a class action on the adverse environmental impacts of fast ferry service in Washington state. The settlement brought relief to the class members and slowed ferry vessels when traveling in sensitive areas. In other litigation, the firm represented plaintiffs in a case against **Kerr-McGee**, on behalf of thousands of persons exposed to radioactive material in a residential area in West Chicago, Illinois.

The firm's Arizona office represented the **Sierra Club** in a case challenging the U.S. Forest Service's approval of a commercial shopping center on the edge of the Grand Canyon. The District Court granted the firm's request to enjoin development of the shopping mall, protecting the Grand Canyon from overdevelopment.

**ERISA LITIGATION.** The federal Employee Retirement Income Security Act (ERISA) spells out the fiduciary duties that plan trustees owe to participants and beneficiaries in retirement programs such as stock options or 401(k) plans, along with guidelines on disability, medical insurance, and severance pay.

**Hagens Berman Sobol Shapiro** specializes in recovering pension and retirement funds lost due to imprudent direction by plan directors, as well as safeguarding the rights of plan participants. Courts have recognized the firm's aptitude in handling large ERISA cases, most recently appointing the firm co-lead counsel in the **Enron** employee litigation. The firm is also litigating ERISA cases on behalf of employees of IPALCO, UAL and Montana Power.

The firm pioneered the discovery of fraud in discounts to employee health plans, representing thousands of **Blue Cross** health insurance plan participants in 10 states who allege that the insurer overcharges participants, obtaining discounts from hospitals but not passing that savings along when calculating copayments.

The firm's discovery led to a Congressional inquiry concerning the company's billing practices. **Hagens Berman Sobol Shapiro** also represents plaintiffs in a proposed class action against **Regence**, breaking new ground in the coverage of contraceptives by health insurance plans.

**INSTITUTIONAL INVESTOR LITIGATION.** **Hagens Berman Sobol Shapiro** provides specialized securities litigation services to public, private and Taft-Hartley pension funds, offering its proprietary and unparalleled asset protection and recovery services to both foreign and domestic institutions. By giving clients the ability to identify, investigate and react to potential wrongdoing by companies in which they invest, the firm enables them to be proactive, not merely reactive.

Recent class actions led by **Hagens Berman Sobol Shapiro** obtained significant settlements. In the **Morrison Knudsen** case, the firm secured a settlement of approximately 60 percent of the largest estimates of possible losses for class members, while in the **Oppenheimer Delta Partners Litigation** the class was awarded settlements of approximately 80 percent of possible losses. In the **Midisoft** case, **Hagens Berman Sobol Shapiro** obtained more than 50 percent of total damages. Numerous other recent cases such as **Waste Management** and **Cendant** have obtained hundreds of millions of dollars in settlements and recovered a large percentage of damages for injured shareholders.

**INTELLECTUAL PROPERTY LITIGATION.** **Hagens Berman Sobol Shapiro** has handled numerous cases involving various aspects of intellectual property (IP). Acting on inquiries from individuals and corporations, HBSS has conducted several investigations into the prosecution and defense of IP rights. IP law is designed to protect the property created by intellect, such as designs used in commerce, including inventions, patents, copyright, and trade dress. IP creations also include artistic works and literary works. In recent years, with the development of new electronic technology, advanced and specialized computer programs and Internet commerce, the definition of IP and how to protect the rights of such property has created very complicated and complex business issues. HBSS has successfully prosecuted and defended individuals and corporations in the area of intellectual property.

**LABOR LITIGATION.** **Hagens Berman Sobol Shapiro** takes a special interest in protecting workers from exploitation, and seeks out cases with potential for ending the largest and most heinous worker abuses. Since employees often lack the individual power to bring about meaningful change in the workplace, the firm typically represents classes of employees in litigation suits including race discrimination, immigrant worker controversy, hour and wage issues, on-the-job injury settlements and other crucial workplace issues.

**Hagens Berman Sobol Shapiro** represents female workers at Boeing facilities in Tulsa, California and other locations, challenging disparities in pay and promotion. The firm also filed a proposed class action on behalf of resident alien workers who claim that the use of illegal workers has unlawfully depressed their wages. Other wage and hour class actions include cases on behalf of workers who were not properly paid for overtime, including a now-settled case against **Denny's** on behalf of its employees, and on behalf of employees of General Electric Aircraft alleging wage and hour violations.

**PRODUCT LIABILITY LITIGATION.** When a product fails to meet accepted or advertised standards, the results can be hazardous or even deadly. In such cases, consumers deserve a right to redress. **Hagens Berman Sobol Shapiro**'s product liability practice represents consumers in variety of product cases including automobile defects, home equipment and defective software.

Firm successes include a settlement involving **Louisiana-Pacific Siding** in which more than 130,000 claims have been paid exceeding \$500 million and a \$925 million settlement in a polybutylene piping case. **Hagens Berman Sobol Shapiro** also represents plaintiffs alleging defects in trunk release mechanisms in a case surrounding the death of four children who died locked in the trunk of a car. The firm continues to pursue Ford and Nissan on behalf of consumers with defective accelerators.

**SECURITIES LITIGATION.** A cornerstone of the firm's practice, **Hagens Berman Sobol Shapiro** contests securities fraud in courts across the nation. To prosecute these complex cases, the firm uses highly experienced experts in a variety of fields as an integral part of the prosecution team, expanding the group's expertise in sophisticated financial and accounting issues.

In a high-profile case, **Hagens Berman Sobol Shapiro** pursued **Boeing** after a tremendous stock loss resulted from the company allegedly conspiring to conceal production problems and bolster share prices through the conclusion of a stock-swap purchase of **McDonnell Douglas**. After several years of intense discovery and litigation, **Boeing** eventually agreed to a settlement that provided more than \$92 million to recoup investors for their losses.

The firm has also acted as co-lead counsel and plaintiffs' counsel representing investors in class actions for securities violations against a variety of corporations including **WPPSS**, **Boston Chicken**, **Oppenheimer**, **PriceCostco**, **MK Rail**, **Bonneville Pacific**, **Mercer International**, and **Omega Environmental**.

**PERSONAL INJURY LITIGATION.** Committed to justice and appropriate compensation in issues of personal injury and wrongful death, the firm assists clients in a range of personal injury litigation.

**Hagens Berman Sobol Shapiro** knows that the health and quality of life of our clients hangs in the balance of the firm's work and has developed an exceptional track record in obtaining significant settlements and awards for the firm's clients.

Cases include **Latex Glove Product Liability Litigation** after nurses and other healthcare providers developed disabling chemical reactions to latex gloves as a result of continuously wearing them on the job, and claims against a **nursing home** where a drug-addicted worker deprived residents of needed pain medications, appropriating the medications for themselves. Another client reached a significant settlement for his permanent injury after logs fell off a truck on its way to a mill, crushing his car with him in it.

**SPECIAL CIRCUMSTANCES LITIGATION.** Certain significant **Hagens Berman Sobol Shapiro** cases fail to fall within an overarching practice area but are substantial enough cases in themselves to represent an independent type of litigation. Special circumstances litigation includes cases ranging from inflated interest rates to slave labor, from illegal arrests to money laundering. Specific examples of special circumstances litigation are listed below:

- **ANHEUSER BUSCH/MILLER BREWING.** The firm represents the family of Casey Goodwin, a 20-year-old girl killed by an underage drunk driver, in a suit alleging that **Anheuser-Busch and Miller Brewing** both promote lemonade- and cola-like 'alcopops' with flashy youth targeted ads, promoting and facilitating underage drinking with reckless disregard for human life and the well-being of the public.
- **MORTGAGE PREMIUM LITIGATION.** The firm has filed suit on behalf of homeowners who have been victims of kickbacks to mortgage brokers who refer borrowers with good credit to the lender for loans with above-market interest rates. Along with the pending class actions, **Hagens Berman Sobol Shapiro** continues to investigate this and other disreputable lending industry schemes.
- **SWISS BANK LITIGATION.** During World War II, Nazis confiscated property and money from holocaust victims, depositing the money and goods into Swiss banks. **Hagens Berman Sobol Shapiro** represented holocaust victims who were victims of this theft, as well as those whose property was confiscated after directly depositing property into the bank. One of the largest money laundering schemes in history; the firm seeks damages and redress for the class.

**WHISTEBLOWER LITIGATION.** Hagens Berman Sobol Shapiro represents “whistleblowers” in a variety of industries with a significant number of cases involving clients using the False Claims Act to recover damages suffered by the federal government. Current cases include actions involving fraudulent Medicare billing, defense contractor fraud and distinctive theft cases.

## Newest Developments

**AVERAGE WHOLESALE PRICE DRUG LITIGATION.** Hagens Berman Sobol Shapiro represents plaintiffs in cases against drug manufacturers misrepresenting the prices paid to them for pharmaceuticals by physicians and pharmacies, thus reaping billions of dollars of profit at the expense of American consumers, including state Medicaid programs.

Recently appointed lead counsel in a proposed nationwide class action also focusing on abuse of AWP, Steve Berman and Tom Sobol now lead the case against pharmaceutical company defendants throughout the United States.

**ENRON EMPLOYEE LITIGATION.** The firm has been appointed co-lead counsel in the **Enron** case on behalf of 2,400 employees against defendants including, but not limited to, the **Enron** company, **J.P. Morgan Chase & Co**, **Credit Suisse First Boston Corporation**, **CitiGroup**, **Arthur Anderson, LLP**, and law firm **Vinson & Elkins**. A complaint amended in 2002 expanded the initial case alleging that the investment bankers and attorneys failed in their obligation to review the financial statements and legal status of **Enron** and were thus active participants in creating **Enron**'s illusion of profitability. The concealing of **Enron**'s true financial condition enabled **Enron**, its top executives and the other defendants to profit at the expense of employees who continued to invest in the company through the retirement and savings plans.

**EXXON MOBIL SECURITIES LITIGATION.** The merger of **Exxon-Mobil** created the largest corporation in history. Hagens Berman Sobol Shapiro is representing **Ohio Public Employees Retirement System** and **State Teachers Retirement System** in challenging the disclosures made by **Exxon** in connection with this merger.

**GRASS SEED LITIGATION.** Hagens Berman Sobol Shapiro filed a class-action suit on behalf of a group of Idaho residents against the state's grass-burning policy, claiming the practice endangers the health of thousands, especially those with respiratory conditions. The suit calls for an immediate end to grass burning and alleges that Idaho's burn policy, which allows grass-seed farmers to burn in excess of 20,000 acres every year, lags far behind other states - including neighboring Washington - which have effectively outlawed grass burning altogether.

Idaho State Court recently ruled that a state law giving Idaho grass-growers broad exemption from trespass and nuisance laws during field burning is unconstitutional. The law, passed in the last session of the Idaho state legislature, was part of a long-fought legal battle between grass growers and a group of individuals who suffer significant health effects from the smoke due to respiratory conditions.

**IPALCO LITIGATION.** The firm has brought a proposed class action against **Ipalco Enterprises**, an Indiana electric utility, and in particular **Ipalco** officers, alleging that the defendants breached their fiduciary duties under ERISA by investing most of the plan's assets in **Ipalco** stock while agreeing to a takeover by **AES**, wiping 90 percent off the value of the stock. Locked in and prevented from changing their options, plan members lost their assets while the officers dumped their own holdings prior to the takeover and the plummeting of the share price. In addition, the structure of the takeover agreement granted the same officers huge "termination benefits" totaling more than \$46 million.

**JP MORGAN CHASE SECURITIES LITIGATION.** This litigation seeks to recover losses incurred by investors in **JP Morgan** stock as the result of its exposure to liability for its lending activities with **Enron**. Several major banking institutions, including **Citigroup** and **JP Morgan**, helped precipitate the **Enron** debacle, and the suit alleges **JP Morgan** helped disguise transactions with **Enron**, treating loans as commodity transactions.

**Hagens Berman Sobol Shapiro LLP** is representing the ECA and Local 134 IBEW Joint Pension Trust of Chicago as the lead plaintiff, and the firm was recently appointed co-lead counsel in the case.

**RIO TINTO/BOUGAINVILLE LITIGATION.** In the Rio Tinto litigation, **Hagens Berman Sobol Shapiro** represents a proposed class of citizens of the Island of Bougainville. Rio operated the world's largest copper mine and dumped billions of tons of mine waste on the island. The extent of the pollution sparked an armed revolt to occupy the mine, shut it down and launched a ten-year war resulting in the death or injury of thousands. The complaint alleges that Rio's conduct in polluting the land, injuring the people and in inciting and/or participating in the conflict, violated international law.

**VISA/MASTERCARD ANTITRUST LITIGATION.** **Hagens Berman Sobol Shapiro** filed suit against credit card giants **VISA** and **MasterCard** on behalf of retailers, challenging charges the companies imposed in connection with use of debit cards. **Hagens Berman Sobol Shapiro** attorney George Sampson served as co-lead counsel in this matter, and helped direct all the lawyers working on the case by setting strategy and providing oversight on all matters.

**Visa** and **MasterCard** recently reached a \$3 billion cash settlement in the suit, and agreed to stop requiring retailers to accept both their credit and debit cards, lowering their transaction fees by about \$1 billion per year.

# Hagens Berman vs. Big Tobacco

Hagens Berman Sobol Shapiro played a major role in representing state government in litigation against the tobacco industry. Because of the unprecedented nature of this litigation, Hagens Berman Sobol Shapiro's role and approach is detailed here.

**A TRIAL HARDENED LITIGATION TEAM.** In the State Attorneys General actions, only two states actually took their cases to trial - Washington and Minnesota. This means that in a government tobacco law enforcement and medical cost recovery action, only two private firms in the entire country have trial experience against the industry - **Hagens Berman Sobol Shapiro** is one of those firms.

In the Washington case, the firm's managing partner Steve Berman was co-lead trial counsel. In this role at trial, he participated in voir dire, delivered the majority of the State's opening statement and presented witnesses, two of whom would become the most important witnesses in the liability phase of the case (Dr. Jack Henningfield, an expert on cigarette design, and Dr. William Farone, former director of research for Philip Morris). Steve also chaired major strategic decisions, and the firm assisted in the preparation of other witnesses presented by the State's other trial lawyers in the case.

**AN EMPHASIS ON LAW ENFORCEMENT.** **Hagens Berman Sobol Shapiro** was instrumental in developing what came to be accepted as the predominant legal tactic to use against the tobacco industry; to wit, emphasizing traditional law enforcement claims such as state consumer protection, antitrust and racketeering laws. Before **Hagens Berman Sobol Shapiro**'s involvement in the state cases, the predominant claims being pursued by most of the states were traditional tort claims, which proved in many states to be unsuccessful. With the exception of the Idaho case, not a single court in a case where **Hagens Berman Sobol Shapiro** served as private counsel to a state dismissed a state's consumer protection or antitrust claims.

In three states - Arizona, Ohio and Oregon - **Hagens Berman Sobol Shapiro** took the lead in pressing the respective states' racketeering statutes and, as a result, the tobacco defendants were faced with the very real prospect of a profits disgorgement remedy, penalties and, in the case of Ohio, the payment of double damages.

**EXCELLENT WITNESS RAPORT.** One of the keys to beating the tobacco industry lies with presenting the proper witnesses, both expert and lay witnesses. With so many states in litigation against the industry, the time and resources of many of the important expert witnesses were taxed. As a result, several witnesses decided to limit their involvement to a small number of states. We found that some of these witnesses most approved of the manner in which **Hagens Berman Sobol Shapiro** assisted in the preparation and presentation of their testimony. Therefore, our firm and the states we worked with became priority clients of these witnesses.

**LEGAL RESEARCH AND BRIEFING.** With the emphasis on law enforcement claims, **Hagens Berman Sobol Shapiro** attorneys built on their already considerable experience utilizing consumer statutes and became experts in consumer protection, antitrust and racketeering laws in the states the firm represented. Because many of these state statutes were patterned after and followed federal law, our expertise with the FTC Act, the Clayton and Sherman Acts, and federal RICO grew. In each state we represented, **Hagens Berman Sobol Shapiro** took the lead in opposing defendants' onslaught of motions to dismiss and, where applicable, motions for summary judgment. As the record reflects, we achieved a remarkable degree of success in these endeavors.

**LIABILITY DOCUMENT DATABASE.** Hagens Berman Sobol Shapiro helped initiate and coordinate the so-called multi-state document review project. This was instituted to ensure that all relevant documents were produced, reviewed and selected for use by the states in the Attorneys General actions. More than 30 million documents were reviewed under the firm's supervision by 12 lawyers from the firm and more than 40 assistant attorneys general. As a result of these efforts, we have compiled comprehensive liability documents that are readily searchable by employing a variety of search criteria and are easily accessible. In addition, having gone to trial against the industry, we organized the best or "hottest" liability documents in our trial exhibit notebooks.

**DE-PRIVILEGING EXPERTISE.** Some of the most damaging liability documents for the industry were and are improperly cloaked from discovery by false claims of attorney-client and work product privilege. Many of these documents were brought to light in the Minnesota litigation, but thousands remained. In a coordinated strategy employed across many of the states that Hagens Berman Sobol Shapiro represented, we continued the de-privileging of these important documents. This effort required countless hours in hearings with judges and special masters, in addition to extensive briefing.

**A FOCUS ON TARGETING MINORS.** In tandem with our general law enforcement approach, Hagens Berman Sobol Shapiro focused the state legal claims on the industry's deplorable practice of luring children to tobacco use. As part of this focus, in Arizona and Ohio we commissioned an expert survey of adolescents' perception of tobacco advertising in general and, more specifically, on the deception of RJR's Winston 'No Bull/No Additives' campaign. The survey data revealed that the vast majority of minors exposed to the campaign believed that the 'No Additives' slogan meant that the cigarette was either less addicting, safer or less harmful to health (when, of course, this was not true). This campaign was the target of a preliminary injunction motion in the Arizona case that was still pending when the states settled their cases. On March 3, 1998, the FTC announced it settled a claim it had subsequently filed on this issue based on our work in Arizona.

**TESTING OUR TRIAL STRATEGY WITH FOCUS GROUP STUDIES.** Hagens Berman Sobol Shapiro conducted numerous focus groups in different states, thus acquiring unparalleled experience with the reactions of potential jurors.

**SERVING THE ELECTED CLIENT.** Hagens Berman Sobol Shapiro was chosen, after competitive bidding, as counsel for 13 states, including those with Democratic and Republican leadership. The reason for our retention, in addition to excellent trial skills and complex litigation service, was our sensitivity to the needs of clients who were elected officials.

**KEY ROLE IN THE NATIONAL SETTLEMENT NEGOTIATIONS.** Steve Berman and Steven Mitchell were both heavily involved in the proposed June 20, 1997 national settlement and the November 1998 final state settlement that settled all of the state's cases for \$206 billion. As such, both have unparalleled experience in negotiating with tobacco industry lawyers and the tobacco companies' CEOs.

**TRIAL EXPERIENCE.** The trial of the Washington case was one of the largest trials conducted in the United States, lasting three months. Thousands of exhibits were offered into evidence and the case was presented using state-of-the-art technology.

# A Short Historical Perspective

(in alphabetical order)

**ALDUS LITIGATION.** The firm acted as co-lead counsel for shareholders in an action settled for payment of up to \$10.6 million to Aldus shareholders.

**EGGHEAD LITIGATION.** In two separate cases, the firm acted as lead counsel for shareholders injured as a result of misrepresentations made in connection with Egghead's initial public offering of common stock, and secondary trading in Egghead stock.

**FOODMAKER LITIGATION.** The firm acted as co-lead counsel after Foodmaker's stock declined in reaction to the Jack-in-the-Box poisoning outbreak. The discovery work done by the firm was utilized and copied by personal injury lawyers who recovered in excess of \$100 million from Foodmaker.

**IMMUNEX LITIGATION.** The firm acted as co-lead counsel on behalf of a class of purchasers of Immunex stock. A settlement of \$14 million was approved by the federal court.

**INTERMEC LITIGATION.** The firm acted as co-lead counsel for shareholders after Intermec stock dropped 30 percent in value over a two-quarter period as a result of a succession of overly optimistic earnings estimates. Our efforts netted a \$5.9 million settlement for the shareholders.

**LOUISIANA-PACIFIC SIDING LITIGATION.** The firm acted as co-lead counsel on a consumer case arising from the failure of a new type of hardboard siding used to clad homes. Over a million consumers are in the class. The case resulted in a landmark, highly favorable settlement that has resulted in compensation for homeowners across the country.

**MICHAEL MILKEN LITIGATION.** The firm, on behalf of beneficiaries of several Washington State public employee pension funds which are administered by the Washington State Investments Board ('WSIB'), brought a RICO and breach of fiduciary duty suit against noted junk bond king Michael Milken, and over forty individuals who were involved as principals or participants in the leveraged buyouts of Beatrice, Safeway, Pace, City and Motel Six. This case pitted the firm against some of America's most powerful individuals and companies. A settlement was reached and received final approval from the Court.

**MORRISON KNUDSEN LITIGATION ('MK').** MK was at the time the largest employer in Boise, Idaho. After a significant write off, **Hagens Berman Sobol Shapiro** filed a shareholder class action, alleging that MK's CEO, William Agee, and other officers, had misled the investors as to MK's true status. The lawsuit claimed that MK was concealing hundreds of millions in losses. In Boise, the public and even the Court were skeptical that this venerable local company could have misled investors. After bitterly fighting the suit, MK ousted Agee and admitted that it was facing hundreds of millions in losses and declared bankruptcy. **Hagens Berman Sobol Shapiro** was able to recover over \$63 million for investors, resulting in what is believed to be the largest settlement in the State of Idaho (except in the tobacco case).

**NORDSTROM LITIGATION.** The firm acted as co-lead counsel for shareholders claiming that the company had misrepresented its liabilities for labor in publicly filed documents distributed to the Investment Community. Steve Berman obtained a \$7.5 million settlement from the company and its inside directors.

**PIPER JAFFRAY.** This action was brought as a class action on behalf of purchasers of common shares of eight closed-end investment companies established, marketed and operated by the Piper Jaffray Companies, Inc., and various subsidiaries. These funds contained Mortgage-backed securities that were routinely referred to as 'AAA' or 'government securities' by defendants in an effort to convince investors

of their overall safety. Defendants ignored or misrepresented the effect that interest rate or market risks would have on these types of investments. In reality, these securities are extremely complex and intricate and are acutely sensitive to changes in market interest rates and are often used as part of an overall strategy to speculate on the course of market interest rates in the future. Unfortunately for Class members, the Defendants lost their gamble on interest rates using the shareholders' money. Market interest rates rose sharply throughout 1994, dealing a devastating blow to the speculative portfolios of the various closed-end funds. Due to the undisclosed risks that defendants undertook, the closed-end funds – and the Class members – suffered massive losses.

A settlement valued at over \$50 million was achieved.

**SPOKANE ASPHALT ANTITRUST LITIGATION.** Carl Hagens and Steve Berman represented independent asphalt pavers who had been excluded from the Spokane asphalt industry. As a result of the case, the Spokane paving industry is open to independent contractors.

**U.S. WEST LITIGATION.** The firm represented shareholders of U.S. West New Vector in a challenge to the proposed buyout of minority shareholders by U.S. West. As a result of this litigation, the proposed buyout was stayed, and a settlement was achieved that resulted in a \$63 million increase in the price of the buyout.

**WASHINGTON PUBLIC POWER SUPPLY SYSTEM SECURITIES LITIGATION.** Steve Berman and James Solimano represented bondholders and the bondholder trustee of WPPSS Nuclear Projects 4 and 5 bonds. Following the largest municipal bond default in history (\$2.25 billion), the trustee, joined by bondholders, brought one of the most complex and protracted securities fraud cases ever filed. After more than five years of intensive litigation, the trustee and the other plaintiffs recovered in excess of \$850 million in settlements from more than 100 defendants. The implementation of various settlement agreements continues and will be a firm matter.

**WASHINGTON STATE FERRY WORKERS WAGE LITIGATION.** The firm represented a class of on-call seamen who alleged that they were not paid for being 'on call' in violation of federal and state law. The case resulted in a rearrangement in work assignments and of the 'on call' system that has resulted in better working conditions.

**WPPSS COST SHARING LITIGATION.** The firm represented Chemical Bank, the trustee for WPPSS Projects 4 and 5 bondholders, in litigation against nearly 100 defendants. The bank recovered \$55 million in costs misallocated among the WPPSS nuclear projects.

## Securities Litigation

Securities litigation has been one of the cornerstones of **Hagens Berman Sobol Shapiro's** practice since the inception of our firm. We have recovered hundreds of millions of dollars for institutional and individual investors defrauded by unscrupulous management of publicly held corporations.

In light of recent cases, such as Enron, **Hagens Berman Sobol Shapiro's** work is even more well recognized as crucial to protecting the rights of investors.

**Hagens Berman Sobol Shapiro** provides unparalleled services to combat corporate fraud. Our attorneys are experts in a wide array of issues unique to specific industries. We also use highly experienced experts in a variety of fields as an integral part of the prosecution team.

According to the former Chairman of the SEC, Arthur Levitt, "... we are witnessing an erosion in the quality of earnings, and therefore the quality of financial reporting. Managing may be giving way to manipulation; Integrity may be losing out to illusion." <sup>1</sup>

We recognize that investing is, by nature, a speculative business involving a wide variety of risks. But no money manager or individual investor should be forced to endure undue risk as a result of misreported financial conditions. We vigorously pursue fraud recovery litigation that forces corporations to answer to the investors they have deceived.

Our firm has represented investors in nationwide class actions for securities violations against WPPSS, Boeing, Einstein-Noah Bagel, Boston Chicken, Exxon-Mobil, Oppenheimer, Morrison Knudsen, ProCyte, Wall Data, PriceCostco, MK Rail, Bonneville Pacific, Mercer International, NeoRx, Egghead and Omega Environmental.

We currently have securities actions in California, Colorado, Florida, Idaho, Michigan, Utah, Tennessee, Texas, Minnesota, New York, and Washington.

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<sup>1</sup> *The Numbers Game*, remarks by Arthur Levitt on September 28, 1998 at the NYU Center for Law and Business.

## **SERVICES PROVIDED TO INSTITUTIONAL INVESTORS**

**Hagens Berman Sobol Shapiro** is a leading provider of specialized securities litigation services to public, private and Taft-Hartley pension funds. We offer proprietary and unparalleled asset protection and recovery services to both foreign and domestic institutions. Our institutional services provide participants with the ability to identify, investigate and react to potential wrongdoing by companies they invest in.

Our program enables clients to be proactive, not reactive. We update our clients on an ongoing basis regarding their exposure and advise them on their legal rights and potential remedies. We make a commitment to our institutional and pension fund clients to protect and defend all of their rights as shareholders and guardians of their beneficiaries' retirement funds.

When money managers suffer lost percentage points as a result of corporate deception, our litigation services allow them to recover a substantial percentage of those losses, increasing the money manager's performance. However, we realize that as a fiduciary, money managers may not have the ability or desire to risk funds on speculative litigation using typical hourly-rate law firms. Therefore, **Hagens Berman Sobol Shapiro** provides institutional investors with several methods of fraud recovery litigation services.

Depending on the size and facts of the case, we may bring individual action on behalf of the institutional investor. Another method is for the institutional investor to be the lead plaintiff in a securities class action against the offending company. **Hagens Berman Sobol Shapiro** helps clients decide which course of action is best for them, and is well-qualified to pursue either method of recovery.

## **THE VALUE OF CLASS-ACTION LITIGATION**

Many class-action cases are very successful, and provide meaningful recoveries to the class members. For example, the Morrison Knudsen and Oppenheimer Delta Partners litigations - both led by **Hagens Berman Sobol Shapiro** - obtained settlements of approximately 60 percent and 80 percent, respectively, of the largest estimates of possible losses for the class members. The Midisoft case, also directed by **Hagens Berman Sobol Shapiro**, obtained more than 50 percent of total damages. Many other recent cases, such as Waste Management and Cendant, have obtained hundreds of millions of dollars in settlements and recovered a large percentage of damages for injured shareholders.

## **DUTIES OF A LEAD PLAINTIFF**

As the lead plaintiff in a class action, the court requires that you will adequately and fairly represent the class. To perform these duties, the institution must be familiar with the litigation. This does not mean it must know every aspect of the litigation. **Hagens Berman Sobol Shapiro** will keep the institution informed of major events and this will satisfy its duty.

The institution may and should confer with us at any time it feels it is appropriate. The institution must also agree to vigorously prosecute the litigation. Meaning, you must hire lawyers experienced in class-action litigation. **Hagens Berman Sobol Shapiro** has national experience in class actions, and has vigorously prosecuted numerous securities fraud class-action cases, with combined recoveries in the hundreds of millions of dollars.

All costs in prosecuting a class action are advanced and paid by **Hagens Berman Sobol Shapiro**, and the institution is not responsible for their payment whether we are successful or unsuccessful.

In short, the institution has minimal time commitments and no financial responsibilities, but will be encouraged to provide its opinions and insights.

### **AN INSTITUTION'S PRESENCE CAN DRAMATICALLY AFFECT THE LITIGATION**

As lead plaintiff, an institution has a direct influence on the strategies and disposition of the case, thereby having a profound effect on the ultimate success of the litigation.

As lead plaintiff, the institution will be a key member of the decision-making team. It will be able to help decide if a contemplated settlement is too low or if it is reasonable under the circumstances. For institutions that have been unhappy with the returns from previous class-action lawsuits they have participated in, overseeing the process to ensure that they are happy with the ultimate result is a compelling reason to participate.

## Environmental Litigation

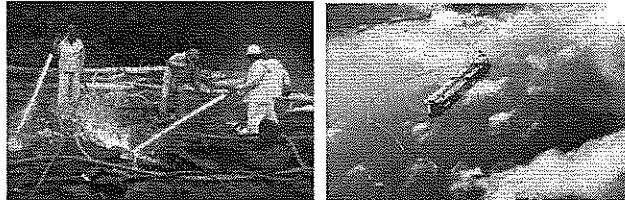
Environmental litigation on behalf of victims of toxic spills or pollution and other land use practices is also an increasing area of focus for **Hagens Berman Sobol Shapiro**. The following is a profile of some of our cases.

**CHINOOK FERRY LITIGATION.** The firm represented a class of property owners who challenged Washington State Ferries' high-speed operation of a new generation of fast ferries in an environmentally sensitive area of Puget Sound. Two of the ferries at issue, the *Chinook* and *Snohomish*, caused environmental havoc and property damage, compelling the property owners to take action. After a successful preliminary trial, the trial court enjoined the operation of the ferries at high speed pending compliance with environmental laws, which was later overturned on appeal by the Washington Supreme Court. A SEPA study conducted in response to the suit confirmed the adverse environmental impacts of the fast ferry service. The trial court approved a \$4.4 million settlement that is among the most favorable in the annals of class litigation in the State of Washington.

**GRAND CANYON LITIGATION.** The firm represented the Sierra Club in a challenge to a Forest Service decision to allow commercial development on the southern edge of the Grand Canyon National Park. Recently the trial court enjoined the project.

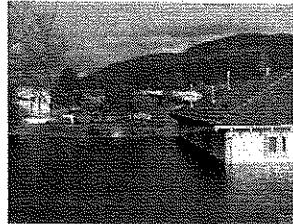
Exxon Valdez Oil Spill  
Cleanup

Exxon Valdez Oil Spill



**EXXON VALDEZ OIL SPILL LITIGATION.** The firm represents various classes of claimants, including fisherman and businesses located in Prince William Sound and other impacted areas, who were damaged by the worst oil spill in United States history. A \$5 billion judgment was awarded by a federal court jury and a \$98 million settlement was achieved with Alyeska, the oil company consortium that owned the output of the pipeline. The Ninth Circuit Court of Appeals recently overturned the punitive damage award and indicated the district court should reconsider the amount, but not the issue of whether punitive damages were appropriate.

**KERR-MCGEE RADIATION CASE.** The firm represented a class action on behalf of residents of West Chicago, Illinois, who have been exposed to radioactive uranium tailings from a rare earth facility operated by Kerr-McGee. The trial court has upheld plaintiff's claim, and Kerr-McGee unsuccessfully sought review in the 7<sup>th</sup> Circuit Court of Appeals. A medical monitoring settlement valued in excess of \$5 million has received court approval.



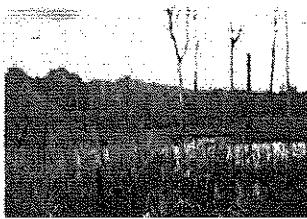
Skagit Valley Flood

**SEATAC LITIGATION.** The firm represented homeowners who claimed that the operation of the Seattle-Tacoma Airport destroyed their property values. The case was the largest inverse condemnation case asserted against a governmental agency in the Pacific Northwest. After a jury trial, the case settled.

**SKAGIT VALLEY FLOOD LITIGATION.** The firm represented farmers, homeowners and businesses who claimed damages as a result of the 1990 flooding of this community. The case, which had been in litigation for ten years and involved a jury trial of over five months in Snohomish County, was the longest jury trial ever conducted in Snohomish County. Following the entry of 53

verdicts against Skagit County, the trial Court entered judgments exceeding \$6.3 million. Ultimately, the State Supreme Court reversed this judgment. Despite this reversal, the firm is proud of this representation and believes that the Supreme Court erred.

**RIO TINTO.** In a landmark case, the firm represents victims of Rio Tinto's mining operation on the island of Bougainville. To build the mine, Rio chemically defoliated, bulldozed and sluiced off an entire mountainside of rain forest. During the years of the mine's operations, billions of tons of toxic mine waste was generated and dumped onto the land and into pristine waters, filling major rivers with tailings, polluting a major bay dozens of miles away, and the Pacific Ocean as well. As a result of its flagrant disregard for the environment and the people of Bougainville, Rio dispossessed the people of Bougainville from their land, destroyed their culture and polluted their environment and lifestyle. Rio destroyed previously pristine rivers and land that provided substance and a way of life for the native people and went to the heart of their local culture. The pollution is so extensive that plaintiffs and members of the class have been exposed to toxic chemicals. In certain villages, the chemicals still remaining have caused the death and/or illness of residents.



Dead Forest Vegetation as a Result of Raised Water Table Levels Near Old Kuneka

Rio's actions on Bougainville were so egregious that they sparked an uprising designed to close the mine. When the uprising succeeded, Rio and the PNG government brought troops in to reopen the mine. Rio provided transport for these troops. After initial unsuccessful efforts, the PNG government, as the agent of or co-venturer of Rio and with the support and encouragement of Rio, instituted a military blockade of the island that lasted for almost ten years. The purpose of the military blockade was to coerce the Bougainville people into surrender so that the mine could be reopened. Both Rio and PNG made enormous profits from the mine and were anxious for it to operate, notwithstanding the resistance of the island's people. The blockade prevented medicine, clothing and other essential items from reaching the people of Bougainville. Hospitals were forced to close, women died needlessly in childbirth and young children died from easily preventable diseases. Rio's top manager of the Bougainville mine encouraged continuation of the blockade for the purpose of 'starving the bastards' out. This blockade directly caused the deaths of at least 10,000 people between 1990 and 1997. According to the Red Cross, the blockade killed more than 2,000 children in just its first two years of operation. By the time the war ended in 1999, 10% of the population of Bougainville, approximately 15,000 civilians, were killed.

The action alleges that Rio's conduct violated customary international law, including prohibitions against destruction of the right to life and health, and prohibitions against racial discrimination, and war crimes. Rio's conduct violated the settled standards for the protection of human rights and the environment recognized by customary international law and United States legal precedent. The plaintiffs seek redress under the federal Alien Tort Claims Act (28 U.S.C. § 1330).